

By: Harris

S.B. No. 575

A BILL TO BE ENTITLED

AN ACT

relating to adoption of the Uniform Prudent Investor Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 9, Property Code, is amended by adding Chapter 116 to read as follows:

CHAPTER 116. UNIFORM PRUDENT INVESTOR ACT

Sec. 116.001. SHORT TITLE. This chapter may be cited as the "Uniform Prudent Investor Act."

Sec. 116.002. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.

Sec. 116.003. PRUDENT INVESTOR RULE. (a) Except as otherwise provided in Subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Sec. 116.004. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES. (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the

1 purposes, terms, distribution requirements, and other
2 circumstances of the trust. In satisfying this standard, the
3 trustee shall exercise reasonable care, skill, and caution.

4 (b) A trustee's investment and management decisions
5 respecting individual assets must be evaluated not in isolation but
6 in the context of the trust portfolio as a whole and as a part of an
7 overall investment strategy having risk and return objectives
8 reasonably suited to the trust.

9 (c) Among circumstances that a trustee shall consider in
10 investing and managing trust assets are such of the following as are
11 relevant to the trust or its beneficiaries:

12 (1) general economic conditions;

13 (2) the possible effect of inflation or deflation;

14 (3) the expected tax consequences of investment
15 decisions or strategies;

16 (4) the role that each investment or course of action
17 plays within the overall trust portfolio, which may include
18 financial assets, interests in closely held enterprises, tangible
19 and intangible personal property, and real property;

20 (5) the expected total return from income and the
21 appreciation of capital;

22 (6) other resources of the beneficiaries;

23 (7) needs for liquidity, regularity of income, and
24 preservation or appreciation of capital; and

25 (8) an asset's special relationship or special value,
26 if any, to the purposes of the trust or to one or more of the
27 beneficiaries.

1 (d) A trustee shall make a reasonable effort to verify facts
2 relevant to the investment and management of trust assets.

3 (e) Except as otherwise provided by and subject to this
4 subtitle, a trustee may invest in any kind of property or type of
5 investment consistent with the standards of this chapter.

6 (f) A trustee who has special skills or expertise, or is
7 named trustee in reliance upon the trustee's representation that
8 the trustee has special skills or expertise, has a duty to use those
9 special skills or expertise.

10 Sec. 116.005. DIVERSIFICATION. A trustee shall diversify
11 the investments of the trust unless the trustee reasonably
12 determines that, because of special circumstances, the purposes of
13 the trust are better served without diversifying.

14 Sec. 116.006. DUTIES AT INCEPTION OF TRUSTEESHIP. Within a
15 reasonable time after accepting a trusteeship or receiving trust
16 assets, a trustee shall review the trust assets and make and
17 implement decisions concerning the retention and disposition of
18 assets, in order to bring the trust portfolio into compliance with
19 the purposes, terms, distribution requirements, and other
20 circumstances of the trust, and with the requirements of this
21 chapter.

22 Sec. 116.007. LOYALTY. A trustee shall invest and manage
23 the trust assets solely in the interest of the beneficiaries.

24 Sec. 116.008. IMPARTIALITY. If a trust has two or more
25 beneficiaries, the trustee shall act impartially in investing and
26 managing the trust assets, taking into account any differing
27 interests of the beneficiaries.

1 Sec. 116.009. INVESTMENT COSTS. In investing and managing
2 trust assets, a trustee may only incur costs that are appropriate
3 and reasonable in relation to the assets, the purposes of the trust,
4 and the skills of the trustee.

5 Sec. 116.010. REVIEWING COMPLIANCE. Compliance with the
6 prudent investor rule is determined in light of the facts and
7 circumstances existing at the time of a trustee's decision or
8 action and not by hindsight.

9 Sec. 116.011. LANGUAGE INVOKING STANDARD OF CHAPTER. The
10 following terms or comparable language in the provisions of a
11 trust, unless otherwise limited or modified, authorizes any
12 investment or strategy permitted under this chapter: "investments
13 permissible by law for investment of trust funds," "legal
14 investments," "authorized investments," "using the judgment and
15 care under the circumstances then prevailing that persons of
16 prudence, discretion, and intelligence exercise in the management
17 of their own affairs, not in regard to speculation but in regard to
18 the permanent disposition of their funds, considering the probable
19 income as well as the probable safety of their capital," "prudent
20 man rule," "prudent trustee rule," "prudent person rule," and
21 "prudent investor rule."

22 SECTION 2. Section 111.004(1), Property Code, is amended to
23 read as follows:

24 (1) "Affiliate" includes:

25 (A) [means] a person who directly or indirectly,
26 through one or more intermediaries, controls, is [controlling,
27 controlled by, or is under common control with another person; or

1 (B) any officer, director, partner, employee, or
2 relative of a person, and any corporation or partnership of which a
3 person is an officer, director, or partner~~[, including a person~~
4 ~~with whom a trustee has an express or implied agreement regarding~~
5 ~~the direct or indirect purchase of trust investments by each from~~
6 ~~the other, except a broker or stock exchange].~~

7 SECTION 3. Sections 113.053(e) and (g), Property Code, are
8 amended to read as follows:

9 (e) A trustee may:

10 (1) comply with the terms of a written executory
11 contract signed by the settlor, including a contract for deed,
12 earnest money contract, buy/sell agreement, or stock purchase or
13 redemption agreement; and

14 (2) sell the stock, bonds, obligations, or other
15 securities of a corporation to the issuing corporation or to its
16 corporate affiliate if the sale is made under an agreement
17 described in Subdivision (1) or complies with the duties imposed by
18 Section 116.004 [~~113.056~~].

19 (g) In addition to other investments authorized by law for
20 the investment of funds held by a fiduciary or by the instrument
21 governing the fiduciary relationship, and notwithstanding any
22 other provision of law and subject to the standard contained in
23 Section 116.004 [~~113.056~~], a bank or trust company acting as a
24 fiduciary, agent, or otherwise, in the exercise of its investment
25 discretion or at the direction of another person authorized to
26 direct the investment of funds held by the bank or trust company as
27 fiduciary, may invest and reinvest in the securities of an open-end

1 or closed-end management investment company or investment trust
2 registered under the Investment Company Act of 1940 (15 U.S.C. Sec.
3 80a-1 et seq.) if the portfolio of the investment company or
4 investment trust consists substantially of investments that are not
5 prohibited by the governing instrument. The fact that the bank or
6 trust company or an affiliate of the bank or trust company provides
7 services to the investment company or investment trust, such as
8 those of an investment advisor, custodian, transfer agent,
9 registrar, sponsor, distributor, manager, or otherwise, and
10 receives compensation for those services does not preclude the bank
11 or trust company from investing or reinvesting in the securities if
12 the compensation is disclosed by prospectus, account statement, or
13 otherwise. An executor or administrator of an estate under a
14 dependent administration or a guardian of an estate shall not so
15 invest or reinvest unless specifically authorized by the court in
16 which such estate or guardianship is pending.

17 SECTION 4. Section 113.055(b), Property Code, is amended to
18 read as follows:

19 (b) A trustee may:

20 (1) retain stock already owned by the trust unless
21 ~~[if]~~ the retention does not satisfy the standard provided by
22 Sections 116.004(a)-(c) or the powers or duties regarding retention
23 of assets contained in Chapter 116 ~~[satisfies Section 113.056 of~~
24 ~~this Act]~~; and

25 (2) exercise stock rights or purchase fractional
26 shares under Section 113.053 of this Act.

27 SECTION 5. The heading of Section 113.056, Property Code,

1 is amended to read as follows:

2 Sec. 113.056. AUTHORIZATION TO MAKE CERTAIN INVESTMENTS
3 ~~[STANDARD FOR TRUST MANAGEMENT AND INVESTMENT]~~.

4 SECTION 6. Sections 113.056(a) and (d), Property Code, are
5 amended to read as follows:

6 (a) Unless the terms of the trust instrument provide
7 otherwise, and subject to the investment standards provided by this
8 subtitle and any investment standards provided by the trust
9 instrument, the trustee may invest all or part of the trust assets
10 in ~~[in acquiring, investing, reinvesting, exchanging, retaining,~~
11 ~~selling, supervising, and managing trust property, including]~~ an
12 investment vehicle authorized for the collective investment of
13 trust funds pursuant to Part 9, Title 12, of the Code of Federal
14 Regulations~~[, a trustee shall exercise the judgment and care under~~
15 ~~the circumstances then prevailing that persons of ordinary~~
16 ~~prudence, discretion, and intelligence exercise in the management~~
17 ~~of their own affairs, not in regard to speculation but in regard to~~
18 ~~the permanent disposition of their funds, considering the probable~~
19 ~~income from as well as the probable increase in value and the safety~~
20 ~~of their capital. In determining whether a trustee has exercised~~
21 ~~prudence with respect to an investment decision, such determination~~
22 ~~shall be made taking into consideration the investment of all the~~
23 ~~assets of the trust, or the assets of the collective investment~~
24 ~~vehicle, as the case may be, over which the trustee had management~~
25 ~~and control, rather than a consideration as to the prudence of the~~
26 ~~single investment of the trust, or the single investment of the~~
27 ~~collective investment vehicle, as the case may be]~~.

1 (d) Subject to any investment standards provided by this
2 chapter, Chapter 116, or the trust instrument [~~Within the~~
3 ~~limitations of Subsection (a) of this section~~], whenever the
4 instrument directs, requires, authorizes, or permits investment in
5 obligations of the United States government, the trustee may invest
6 in and hold such obligations either directly or in the form of
7 interests in an open-end management type investment company or
8 investment trust registered under the Investment Company Act of
9 1940, 15 U.S.C. 80a-1 et seq., or in an investment vehicle
10 authorized for the collective investment of trust funds pursuant to
11 Part 9, Title 12 of the Code of Federal Regulations, so long as the
12 portfolio of such investment company, investment trust, or
13 collective investment vehicle is limited to such obligations and to
14 repurchase agreements fully collateralized by such obligations.

15 SECTION 7. Section 113.060(c), Property Code, is amended to
16 read as follows:

17 (c) A trustee is not responsible for investment decisions
18 made by an investment agent employed as provided by this section if:

19 (1) the trustee exercises the judgment and care under
20 the circumstances then prevailing that a person of ordinary
21 prudence, discretion, and intelligence would exercise in the
22 management of the person's own funds in selecting the investment
23 agent and in establishing the scope and terms of the delegation;

24 (2) the trustee investigates the credentials of the
25 investment agent, including:

26 (A) reviewing the agent's experience,
27 performance history, and financial stability;

1 (B) verifying the agent's professional license
2 and registration, if any; and

3 (C) establishing that the agent is insured or
4 bonded;

5 (3) the investment agent is subject to the
6 jurisdiction of the courts of this state;

7 (4) under the terms of the delegation agreement, the
8 investment agent:

9 (A) is subject to the standard of trust
10 management and investment applicable to the trustee of the trust as
11 prescribed by Chapter 116 [~~Section 113.056~~]; and

12 (B) assumes liability for the failure to follow
13 that standard; and

14 (5) the trustee periodically reviews the investment
15 decisions made by the investment agent to ensure compliance with
16 the investment strategy prescribed by the trustee for the trust.

17 SECTION 8. Section 114.001(b), Property Code, is amended to
18 read as follows:

19 (b) The trustee is not liable to the beneficiary for a loss
20 or depreciation in value of the trust property or for a failure to
21 make a profit that does not result from a failure to perform the
22 duties set forth in this subtitle [~~Section 113.056~~] or from any
23 other breach of trust.

24 SECTION 9. Section 45.107, Education Code, is amended to
25 read as follows:

26 Sec. 45.107. INVESTMENT OF GIFTS, DEVISES, AND BEQUESTS. A
27 gift, devise, or bequest made to a school district to provide

1 college scholarships for graduates of the district may be invested
2 [~~or retained~~] by the board of trustees of the district as provided
3 by Section 116.004 [~~113.056~~], Property Code, unless otherwise
4 specifically provided by the terms of the gift, devise, or bequest.

5 SECTION 10. Section 815.307, Government Code, is amended to
6 read as follows:

7 Sec. 815.307. DUTY OF CARE. The assets of the retirement
8 system shall be invested and reinvested without distinction as to
9 their source in accordance with Section 67, Article XVI, Texas
10 Constitution. Investment decisions are subject to the standard
11 provided in the Texas Trust Code by Sections 116.004(a)-(c)
12 [~~Section 113.056(a)~~], Property Code.

13 SECTION 11. Section 825.301(a), Government Code, is amended
14 to read as follows:

15 (a) The board of trustees shall invest and reinvest assets
16 of the retirement system without distinction as to their source in
17 accordance with Section 67, Article XVI, Texas Constitution. For
18 purposes of the investment authority of the board of trustees under
19 Section 67, Article XVI, Texas Constitution, "securities" means any
20 investment instrument within the meaning of the term as defined by
21 Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil
22 Statutes), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section
23 78c(a)(10). An interest in a limited partnership or investment
24 contract is considered a security without regard to the number of
25 investors or the control, access to information, or rights granted
26 to or retained by the retirement system. Any instrument or contract
27 intended to manage transaction or currency exchange risk in

1 purchasing, selling, or holding securities is considered to be a
2 security. Investment decisions are subject to the standard
3 provided in the Texas Trust Code by Sections 116.004(a)-(c)
4 [~~Section 113.056(a)~~], Property Code.

5 SECTION 12. Section 840.303, Government Code, is amended to
6 read as follows:

7 Sec. 840.303. DUTY OF CARE. The assets of the retirement
8 system shall be invested and reinvested without distinction as to
9 their source in accordance with Section 67, Article XVI, Texas
10 Constitution. Investment decisions are subject to the standard
11 provided in the Texas Trust Code by Sections 116.004(a)-(c)
12 [~~Section 113.056(a)~~], Property Code.

13 SECTION 13. Section 845.301(a), Government Code, is amended
14 to read as follows:

15 (a) The assets of the retirement system shall be invested
16 and reinvested without distinction as to their source in accordance
17 with Section 67, Article XVI, Texas Constitution. For purposes of
18 the investment authority of the board of trustees under Section 67,
19 Article XVI, Texas Constitution, "securities" means any investment
20 instrument within the meaning of the term as defined by Section 4,
21 The Securities Act (Article 581-4, Vernon's Texas Civil Statutes),
22 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).
23 Investment decisions are subject to the standard provided in the
24 Texas Trust Code by Sections 116.004(a)-(c) [~~Section 113.056(a)~~],
25 Property Code.

26 SECTION 14. Section 333(b), Texas Probate Code, is amended
27 to read as follows:

1 (b) In determining whether to order the sale of an asset
2 under Subsection (a) of this section, the court shall consider:

3 (1) the representative's duty to take care of and
4 manage the estate as a person of ordinary prudence, discretion, and
5 intelligence would exercise in the management of the person's own
6 affairs; and

7 (2) whether the asset constitutes an asset that a
8 trustee is authorized to invest under Section 116.004 [~~113.056~~] or
9 Subchapter F, Chapter 113, Property Code.

10 SECTION 15. Section 812(b), Texas Probate Code, is amended
11 to read as follows:

12 (b) In determining whether to order the sale of an asset
13 under Subsection (a) of this section, the court shall consider:

14 (1) the guardian's duty to take care of and manage the
15 estate as a person of ordinary prudence, discretion, and
16 intelligence would exercise in the management of the person's own
17 affairs; and

18 (2) whether the asset constitutes an asset that a
19 trustee is authorized to invest under Section 116.004 [~~113.056~~] or
20 Subchapter F, Chapter 113, Property Code.

21 SECTION 16. Section 856(a), Texas Probate Code, is amended
22 to read as follows:

23 (a) If a guardian of an estate deems it is in the best
24 interests of the ward the guardian is appointed to represent to
25 invest on behalf of the ward in the Texas tomorrow constitutional
26 trust fund [~~Tomorrow Fund~~] established by Subchapter F, Chapter 54,
27 Education Code, or to invest in or sell any property or security in

1 which a trustee is authorized to invest by either Section 116.004
2 [~~113.056~~] or Subchapter F, Chapter 113, of the Texas Trust Code
3 (Subtitle B, Title 9, Property Code), and the investment or sale is
4 not expressly permitted by other sections of this chapter, the
5 guardian may file a written application in the court in which the
6 guardianship is pending that asks for an order authorizing the
7 guardian to make the desired investment or sale and states the
8 reason why the guardian is of the opinion that the investment or
9 sale would be beneficial to the ward. A citation or notice is not
10 necessary under this subsection unless ordered by the court.

11 SECTION 17. Sections 113.003, 113.006, and 113.056(b) and
12 (c), Property Code, are repealed.

13 SECTION 18. (a) This Act takes effect September 1, 2003,
14 and applies only to a trust existing on or created after that date.

15 (b) With respect to a trust existing on September 1, 2003,
16 this Act applies only to an act or omission relating to the trust
17 occurring after August 31, 2003.